

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ISABEL P. VASQUEZ,)	
)	No. CV-05-5086-MWL
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on March 13, 2006. (Ct. Rec. 13, 21). Plaintiff Isabel Vasquez ("Plaintiff") filed a reply brief on March 10, 2006. (Ct. Rec. 24). Attorney David L. Lybbert represents Plaintiff; Special Assistant United States Attorney Richard A. Morris represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 21) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 13).

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JURISDICTION

On May 15, 1992, Plaintiff applied for Supplemental Security Income ("SSI") benefits and Disability Insurance Benefits ("DIB"). (Administrative Record ("AR") 198). She was found to be disabled as of February 22, 1992; however, her disability was found to have ceased on January 1, 1997, after the regulations were changed affecting Plaintiff's ability to remain on benefits when drug addiction or alcoholism ("DAA") was a contributing factor material to the Commissioner's determination that the individual was disabled. (AR 198-201, 377-385). The Administrative Law Judge ("ALJ") concluded on June 22, 1998, that Plaintiff failed to establish disability based on her medical conditions independent of DAA, and; accordingly, her eligibility for disability benefits was terminated as of January 1, 1997. (AR 383, 385). Plaintiff appealed this determination, and the Appeals Council denied a request for review on January 14, 2000. (AR 397-400). Therefore, the ALJ's June 22, 1998 decision became the final decision of the Commissioner, which was appealable to the district court pursuant to 42 U.S.C. § 405(g).

It appears that Plaintiff did not appeal the ALJ's June 22, 1998 determination to the district court. Instead, on February 1, 2000, Plaintiff filed new applications for SSI benefits and DIB, alleging a disability onset date of January 1, 1997, due to degenerative disc disease, depression, arthritis, acute chronic spinal arthritis, and gout. (AR 434-436, 454, 638-640). The applications were denied initially and on reconsideration.

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1 After timely requesting a hearing, Plaintiff appeared before
2 an ALJ on December 14, 2001, at which time the ALJ heard testimony
3 from Plaintiff. (AR 867-896). A supplemental hearing was held on
4 October 3, 2002, at which time the ALJ heard testimony from
5 Plaintiff and vocational expert, Tom Moreland. (AR 897-932). On
6 January 31, 2003, the ALJ issued a decision finding that claimant
7 was not disabled. (AR 653-658). However, on March 19, 2003, the
8 Appeals Council vacated the January 31, 2003 hearing decision and
9 remanded the case to an ALJ for further proceedings. (AR 665-
10 667). The Appeals Council concluded that the ALJ did not address
11 the proper time period and directed that a new determination be
12 made applying the original onset date (January 1, 1997). (AR
13 666-667).

14 On December 8, 2003, Plaintiff appeared before ALJ Paul
15 Gaughen, at which time the ALJ heard testimony solely from
16 Plaintiff. (AR 933-952). A supplemental hearing was held on
17 November 18, 2004, at which time the ALJ heard testimony from
18 Plaintiff, medical expert Glen Almquist, M.D., and vocational
19 expert, Bill Weiss. (AR 953-1018). On March 25, 2005, ALJ Paul
20 Gaughen issued a decision finding that Plaintiff was not disabled.
21 (AR 27-36). The Appeals Council denied a request for review on
22 July 7, 2005. (AR 11-14). Therefore, the ALJ's decision became
23 the final decision of the Commissioner, which is appealable to the
24 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed
25 this action for judicial review pursuant to 42 U.S.C. § 405(g) on
26 August 19, 2005. (Ct. Rec. 2).

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1 The relevant applications for DIB and SSI benefits in this
2 matter are Plaintiff's February 1, 2000 applications. (AR 434-
3 436, 638-640, 935). The relevant time period in this action is
4 from January 1, 1997 (the date after Plaintiff's previous
5 disability was found to have ceased) through March 25, 2005 (the
6 date of ALJ Paul Gaughen's determination in this case). Evidence
7 from outside of this period of time can be deemed useful as
8 background information; however, it is irrelevant to the extent
9 that it does not address Plaintiff's medical status during the
10 relevant period at issue in this action.

11 **STATEMENT OF FACTS**

12 The facts have been presented in the administrative hearing
13 transcript, the ALJ's decision, the briefs of both Plaintiff and
14 the Commissioner and will only be summarized here. Plaintiff was
15 56 years old on the date of ALJ Paul Gaughen's decision. (AR 28).
16 Plaintiff indicated that she does not feel she is physically or
17 mentally able to return to any kind of work that she has done in
18 the past. (AR 948).

19 At the administrative hearing held on December 8, 2003,
20 Plaintiff testified that, with regard to back symptoms, she was in
21 constant pain in the mid to late 1990's. (AR 943). She stated
22 that she could sit for a little while but would then need to get
23 up and walk due to cramping and pain. (AR 943). She indicated
24 that if she walked one block her left hip would hurt, and she
25 would need to find a place to sit or something to lean against.
26 (AR 944). She stated she could not lift any amount and was unable
27 to bend like she was once capable of doing. (AR 944). Because of
28 the back pain, she had difficulty with sleeping. (AR 948-949).

1 Plaintiff testified that over the last two years she had been
2 going to other doctors for treatment for low back pain, and those
3 doctors had put her on different medications. (AR 945). She
4 indicated that she also continued on medication for depression and
5 had previously gone to counseling. (AR 946). She testified that
6 she had been seeing a counselor for a year or two, but it had been
7 a while. (AR 947).

8 With regard to her past problems with drugs and alcohol,
9 Plaintiff stated that she had been clean and sober for close to
10 nine years. (AR 948). She testified that she knew that she
11 "destroyed [her] body" with the drugs and alcohol. (AR 949). She
12 specifically stated that "it was just depression because of the
13 drugs." (AR 949).

14 Plaintiff indicated that she was assaulted by a spouse in
15 1992 and, from that time, she has had difficulties with her back
16 and with depression. (AR 949-950). She stated that she gradually
17 got worse. (AR 950).

18 At the administrative hearing held on November 18, 2004,
19 Plaintiff testified that her job duties at the farms and ranches
20 she previously worked at consisted of pruning, picking fruits and
21 vegetables, carrying heavy baskets and bags, climbing ladders and
22 bending to cut onions. (AR 985-986). Plaintiff also testified
23 that she had previously worked in sorting vegetables and fruits.
24 (AR 991, 1000-1002). She also performed the job of trimming
25 potatoes with a knife. (AR 993). Plaintiff stated that she also
26 previously worked as a certified nurse's assistant in 1991 and
27 1992. (AR 1003-1004).

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1 At the administrative hearing held on November 18, 2004,
2 Medical expert Glen Almquist, M.D., testified. (AR 960-983). Dr.
3 Almquist indicated that Plaintiff suffered from mild to moderate
4 degenerative arthritis of the lumbosacral spine at L4-5 and L5/S1
5 without radiculopathy and, at 5'1" tall and weighing 220 pounds,
6 was obese. (AR 963). With the assistance of the ALJ, Dr.
7 Almquist indicated that the first objective test of the
8 lumbosacral spine was produced in 1996. (AR 964-967). He found
9 that a 1996 CT Scan of the lumbosacral spine coincided with his
10 conclusion that Plaintiff had moderate degenerative arthritis at
11 the two levels. (AR 966). He next noted that a 2000 x-ray of the
12 lumbosacral spine revealed some hypertrophic osteofite formation
13 which was compatible with her age. (AR 967-968). Dr. Almquist
14 also noted that there was no mention of any narrowing of the disk
15 spaces or narrowing of the foraminal. (AR 968). An August 31,
16 2000 x-ray further revealed that the disk spaces were preserved,
17 there was degenerative facet arthritis of the lower two spaces for
18 the lumbar and lumbosacral space, and the cervical spine was
19 normal. (AR 968). April 25, 2002 x-rays of the thoracic spine
20 showed moderate degenerative arthritis spaces as normal. (AR 968-
21 969). Dr. Almquist noted that a February 21, 2003 x-ray of the
22 lumbosacral spine showed mild anterior subluxation which may be
23 due to degenerative facet changes which are common in the lower
24 spine. (AR 969). Dr. Almquist indicated that this confirmed the
25 1996 CT scan and other x-rays that revealed that Plaintiff had
26 moderate degenerative arthritis changes. (AR 969).

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1 Based on his review of the record, Dr. Almquist concluded
2 that Plaintiff's moderate degenerative arthritis with obesity did
3 not meet or equal a Listings impairment. (AR 971). He further
4 concluded that Plaintiff would be restricted to light work as a
5 result of her impairments. (AR 971). He indicated that she would
6 be able to forward bend and squat only occasionally and may have
7 other issues with mental health, but would otherwise be able to do
8 just about a full level of light work. (AR 971). Dr. Almquist
9 noted that Plaintiff's arthritis would not preclude the bending,
10 stooping, twisting and turning requirements of light work. (AR
11 972-973). He indicated that she should only occasionally bend,
12 twist and stoop. (AR 973-974). He specifically stated, however,
13 that Plaintiff was not restricted from holding her hands
14 outstretched in front of her as in doing assembly or trim type
15 work. (AR 974).

16 On cross-examination, Dr. Almquist responded that even with
17 the combined effects of Plaintiff's degenerative arthritis, the
18 symptoms from the arthritis and the impact of her obesity, she did
19 not come close to meeting or equaling Listing 1.04. (AR 982). He
20 explained that, while her weight was high, her back changes were
21 only moderate and there was no radiculopathy. (AR 982). Dr.
22 Almquist stated that what Plaintiff has is very common for middle
23 aged people, arthritis of the facets. (AR 982). He stated that
24 she is a typical light work patient with obesity. (AR 983).

25 Vocational expert Bill Weiss also testified at the
26 administrative hearing held on November 18, 2004. (AR 984-1016).
27 Mr. Weiss indicated that Plaintiff's past farm work was classified
28 as field worker II. (AR 986). He described this work as a heavy-

1 duty, unskilled job. (AR 989). After the ALJ and Plaintiff's
2 counsel examined Plaintiff regarding her vocational history (AR
3 991-1006), Mr. Weiss concluded that Plaintiff also performed past
4 relevant work as an agricultural sorter with trimming, a position
5 which is light-duty and unskilled (AR 1006-1007). He also found
6 that her past relevant work as a certified nurse's assistant was
7 medium-duty, semi-skilled work. (AR 1007).

8 The ALJ gave Mr. Weiss the hypothetical of an individual with
9 a marginal education, approximately 50-years old, work history
10 equal to Plaintiff's, capable of performing light exertion work
11 but with obesity being a factor, could sit about eight hours in an
12 eight hour workday and stand and/or walk about six hours in an
13 eight hour workday, has an unrestricted ability to reach forward,
14 can occasionally bend, stoop, kneel, crawl or twist, has
15 significant problems in learning detailed instructions or
16 procedures or complex new work tasks, can learn and apply simple,
17 repetitive tasks, has difficulty working without supervision and
18 in adapting to frequent changes in the work setting or in
19 procedures to be followed, may occasionally present with
20 irritability from a depressed affect, and may occasionally show
21 deficits in her alertness and concentration on task (which could
22 be corrected by supervision). (AR 1007-1008). Assuming this type
23 of individual, the vocational expert opined that the hypothetical
24 individual could perform Plaintiff's past relevant work as an
25 agricultural sorter. (AR 1008).

26 On cross-examination, Mr. Weiss indicated that even if the
27 individual would have to avoid repetitive or prolonged bending,
28 twisting and stooping, she could still perform the physical

1 demands of an agricultural sorter. (AR 1009). With the added
2 mental restrictions as outlined by James Bailey, Ph.D., Mr. Weiss
3 indicated he would need further information before making a
4 vocational opinion. (AR 1010-1012). With the limitations as
5 assessed by Dr. Kahn in August of 2000, Mr. Weiss indicated that
6 the limitations would preclude all work. (AR 1012-1013). With
7 the restriction assessed by Dr. Bunch in January of 1997, coupled
8 with the mental limitations indicated by the ALJ in the
9 hypothetical, Mr. Weiss stated that Plaintiff could still perform
10 other simple, sedentary, unskilled jobs. (AR 1013).

11 SEQUENTIAL EVALUATION PROCESS

12 The Social Security Act (the "Act") defines "disability" as
13 the "inability to engage in any substantial gainful activity by
14 reason of any medically determinable physical or mental impairment
15 which can be expected to result in death or which has lasted or
16 can be expected to last for a continuous period of not less than
17 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
18 Act also provides that a Plaintiff shall be determined to be under
19 a disability only if his impairments are of such severity that
20 Plaintiff is not only unable to do his previous work but cannot,
21 considering Plaintiff's age, education and work experiences,
22 engage in any other substantial gainful work which exists in the
23 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
24 Thus, the definition of disability consists of both medical and
25 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
26 (9th Cir. 2001).

27 The Commissioner has established a five-step sequential
28 evaluation process for determining whether a person is disabled.

1 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is
2 engaged in substantial gainful activities. If he is, benefits are
3 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
4 decision maker proceeds to step two, which determines whether
5 Plaintiff has a medically severe impairment or combination of
6 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

7 If Plaintiff does not have a severe impairment or combination
8 of impairments, the disability claim is denied. If the impairment
9 is severe, the evaluation proceeds to the third step, which
10 compares Plaintiff's impairment with a number of listed
11 impairments acknowledged by the Commissioner to be so severe as to
12 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
13 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment
14 meets or equals one of the listed impairments, Plaintiff is
15 conclusively presumed to be disabled. If the impairment is not
16 one conclusively presumed to be disabling, the evaluation proceeds
17 to the fourth step, which determines whether the impairment
18 prevents Plaintiff from performing work he has performed in the
19 past. If Plaintiff is able to perform his previous work, he is
20 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff
21 cannot perform this work, the fifth and final step in the process
22 determines whether Plaintiff is able to perform other work in the
23 national economy in view of his residual functional capacity and
24 his age, education and past work experience. 20 C.F.R. §§
25 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

26 The initial burden of proof rests upon Plaintiff to establish
27 a *prima facie* case of entitlement to disability benefits.
28 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*

1 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
2 met once Plaintiff establishes that a physical or mental
3 impairment prevents him from engaging in his previous occupation.
4 The burden then shifts to the Commissioner to show (1) that
5 Plaintiff can perform other substantial gainful activity and (2)
6 that a "significant number of jobs exist in the national economy"
7 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498
8 (9th Cir. 1984).

9 **STANDARD OF REVIEW**

10 Congress has provided a limited scope of judicial review of a
11 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold
12 the Commissioner's decision, made through an ALJ, when the
13 determination is not based on legal error and is supported by
14 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
15 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
16 1999). "The [Commissioner's] determination that a plaintiff is
17 not disabled will be upheld if the findings of fact are supported
18 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
19 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
20 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
21 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance.
22 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
23 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
24 573, 576 (9th Cir. 1988). Substantial evidence "means such
25 evidence as a reasonable mind might accept as adequate to support
26 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
27 (citations omitted). "[S]uch inferences and conclusions as the
28 [Commissioner] may reasonably draw from the evidence" will also be

1 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).

2 On review, the court considers the record as a whole, not just the
3 evidence supporting the decision of the Commissioner. *Weetman v.*
4 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (*quoting Kornock v.*
5 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

6 It is the role of the trier of fact, not this court, to
7 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
8 evidence supports more than one rational interpretation, the court
9 may not substitute its judgment for that of the Commissioner.
10 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
11 (9th Cir. 1984). Nevertheless, a decision supported by
12 substantial evidence will still be set aside if the proper legal
13 standards were not applied in weighing the evidence and making the
14 decision. *Browner v. Secretary of Health and Human Services*, 839
15 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
16 evidence to support the administrative findings, or if there is
17 conflicting evidence that will support a finding of either
18 disability or nondisability, the finding of the Commissioner is
19 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
20 1987).

21 ALJ'S FINDINGS

22 The ALJ found at step one that Plaintiff has not engaged in
23 substantial gainful activity since her alleged onset date. (AR
24 29). At step two, the ALJ determined that Plaintiff has the
25 severe impairments of degenerative changes of the spine, obesity,
26 depression, anxiety related to past domestic violence, and
27 borderline intellectual functioning, but that she does not have an
28 impairment or combination of impairments listed in or medically

1 equal to one of the Listings impairments. (AR 29). The ALJ
2 indicated that Plaintiff also has hypertension and osteoarthritis,
3 but that these impairments did not significantly limit her ability
4 to perform basic work activities and; therefore, were not
5 considered severe. (AR 29-30).

6 The ALJ noted that Plaintiff had a history of substance
7 abuse, involving alcohol, cocaine and marijuana, but that the
8 medical records indicated that the substance abuse had been in
9 remission since 1994. (AR 30). The ALJ thus concluded that
10 Plaintiff had not had a medically determinable substance abuse
11 disorder at any time pertinent to his decision. (AR 30).

12 The ALJ concluded that Plaintiff has the residual functional
13 capacity ("RFC") to perform a limited range of light work. (AR
14 30). He found that Plaintiff would be capable of lifting or
15 carrying no more than 20 pounds occasionally and no more than 10
16 pounds frequently, could stand and/or walk no more than a total of
17 six hours in an eight-hour workday, could only occasionally bend,
18 stoop, crawl, or twist, could not perform work involving detailed
19 instructions, would have difficulty working without supervision,
20 would have difficulty in adapting to changes in the workplace or
21 in procedures, and would be unable to perform work that would not
22 accommodate her occasional concentration deficits, irritability
23 and affect. (AR 32).

24 At step four of the sequential evaluation process, the ALJ
25 found that, based on Plaintiff's RFC, she was able to perform the
26 exertion requirements of her past relevant work as an agricultural
27 sorter, a job the vocational expert described as light exertion,
28 unskilled. (AR 34). Accordingly, the ALJ determined at step four

1 of the sequential evaluation process that Plaintiff was not
2 disabled within the meaning of the Social Security Act. (AR 35-
3 36).

4 ISSUES

5 Plaintiff contends that the Commissioner erred as a matter of
6 law. Specifically, she argues that:

7 1. Plaintiff is more limited from a psychological
8 standpoint than what was determined by the ALJ;

9 2. The ALJ erred by failing to conclude that Plaintiff
10 meets or equals a Listings impairment; specifically, Listings
11 12.05 or 12.04;

12 3. Plaintiff is more limited from a physical standpoint
13 than what was determined by the ALJ;

14 4. The ALJ erred by finding Plaintiff not credible; and

15 5. The ALJ erred by failing to apply the grids which would
16 have directed a finding that Plaintiff is disabled;

17 This court must uphold the Commissioner's determination that
18 Plaintiff is not disabled if the Commissioner applied the proper
19 legal standards and there is substantial evidence in the record as
20 a whole to support the decision.

21 DISCUSSION

22 **A. Psychological Limitations**

23 Plaintiff contends that she is more limited from a
24 psychological standpoint than what was determined by the ALJ.
25 (Ct. Rec. 13-2). Plaintiff specifically asserts that the ALJ
26 erred by failing to find that she meets or equals Listings 12.05
27 or 12.04. (Ct. Rec. 13-2, p. 6). Therefore, Plaintiff argues
28 that the ALJ erred at step three of the sequential evaluation

1 process. In support of her argument in this regard, Plaintiff
2 directs the Court's attention to psychological testing done by
3 Daniel McIvor, Ph.D., in November of 1996 (AR 300-308), an
4 evaluation done by Roberto Valdez, Ph.D., on July 7, 2003 (AR 696-
5 701), a form completed by reviewing state agency physician, James
6 E. Bailey, Ph.D., on July 27, 2002 (AR 564-566), an August 2000
7 consultative examination performed by Muhammed Kahn, M.D. (AR 582-
8 585), and forms completed by mental health counselor Hector DeLeon
9 (AR 750-757). (Ct. Rec. 13-2, pp. 6-11).

10 At the outset, the undersigned notes that the forms completed
11 by Mr. DeLeon are unpersuasive. Mr. DeLeon is neither a physician
12 nor a licensed or certified psychologist. Therefore, his opinions
13 do not qualify as "medical evidence . . . from an acceptable
14 medical source" as required by the Social Security regulations.
15 20 C.F.R. §§ 404.1513, 416.913. Moreover, Mr. DeLeon concluded
16 that Plaintiff's symptoms would last a minimum of three months to
17 30 weeks and a maximum of six months to 30 weeks. (AR 753, 757).
18 Mr. DeLeon thus found that Plaintiff's mental limitations would
19 not meet the duration requirements of the Act (one year), instead
20 finding that they were only expected to last a maximum of 30
21 weeks. 42 U.S.C. § 1382c(a)(3)(A). Mr. DeLeon also stated that
22 Plaintiff's mental health impairments would affect her ability to
23 work in a regular and predictable manner "until she is stable,"
24 (AR 753), and then on the same page of the same report Mr. DeLeon
25 indicated that Plaintiff was "somewhat stable" (AR 753).

26 The ALJ found that Plaintiff's mental RFC includes
27 limitations of difficulty working without supervision and in
28 adapting to changes in the workplace or in procedures, and an

1 inability to perform work that would not accommodate her
2 occasional concentration deficits, irritability and flat affect.
3 (AR 32). In making this determination, the ALJ appropriately
4 interpreted all relevant medical reports of record. (AR 29-34).

5 **1. Listing 12.05C - Mental retardation**

6 Plaintiff argues that she meets or equals Listing 12.05C. 20
7 C.F.R. Pt. 404, Subpt. P, App. 1, 12.05. Listing 12.05 deals with
8 mental retardation characterized as significantly subaverage
9 general intellectual functioning with deficits in adaptive
10 functioning initially manifested during the developmental period;
11 i.e., the evidence demonstrates or supports onset of the
12 impairment before age 22. 20 C.F.R. § 404, Subpt. P, App. 1. In
13 order to meet or equal Listing 12.05C, Plaintiff must show a valid
14 verbal, performance, or full scale IQ of 60 through 70 and a
15 physical or other mental impairment imposing an additional and
16 significant work-related limitation of function. 20 C.F.R. Pt.
17 404, Subpt. P, App. 1, 12.05C.

18 It is Plaintiff's responsibility to prove that she is
19 disabled at step three of the sequential evaluation process. 20
20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d). Plaintiff bears the
21 burden of establishing that her impairments satisfy the
22 requirements of a Listings impairment. *Tackett v. Apfel*, 180 F.3d
23 1094, 1098-1099 (9th Cir. 1999).

24 While Plaintiff directs the Court's attention to Dr. Valdez'
25 July 2003 examination which found that Plaintiff had a verbal IQ
26 score of 69 (AR 698), this is the only score of record falling
27 within the range of Listing 12.05C. Dr. Valdez also found her
28 performance IQ was 79 and her full scale IQ was 72, above the

1 range set by Listing 12.05C. (AR 698). It is also significant to
2 note that Dr. Valdez indicated that Plaintiff's diagnosed
3 conditions were caused by past or present alcohol or drug abuse.
4 (AR 697). Dr. McIvor's November 1996 examination scored
5 Plaintiff's verbal IQ as 72, performance IQ as 91 and full-scale
6 IQ as 80. (AR 306). Dr. McIvor specifically stated in his report
7 that Plaintiff could possibly function well in a fairly simple,
8 repetitive inspection or assembly job. (AR 307). Both Drs.
9 McIvor and Valdez concluded that Plaintiff was functioning in the
10 borderline range of intelligence. (AR 307, 698). This finding of
11 borderline intellectual functioning was confirmed by clinical
12 psychologist Lynn M. Orr, Ph.D., who evaluated Plaintiff on
13 November 23, 2004. (AR 1023-1028). Dr. Orr also determined that
14 the record reflects that Plaintiff was functioning in the
15 borderline range, rather than in the range of one considered
16 mentally retarded.¹ (AR 1027). Dr. Orr specifically found that
17 Plaintiff presented no indication of psychomotor agitation or
18 retardation. (AR 1026). In addition, the form filled out by
19 David E. Gross, M.D., and affirmed by Dr. Bailey on July 27, 2000,
20 noted that Plaintiff's level of understanding and memory was
21 compatible with remembering short and simple instructions,
22 concentration and attention should be adequate for simple
23 repetitive tasks for a full workday and full workweek, social
24 interaction capacity should be adequate for dealing with peers and
25 supervisors, and adaptation capacity should be intact for usual
26 work setting. (AR 566). Christine Saroian, M.D., evaluated

27
28 ¹While Dr. Orr indicated that the record reflected a borderline range
of intelligence, she found that Plaintiff's behavior during the exam was more
that of a person in the average or low-average range. (AR 1027).

1 Plaintiff on June 28, 2000, and determined that Plaintiff did not
2 appear to be agitated or to display psychomotor retardation or
3 agitation. (AR 561). Dr. Saroian noted that Plaintiff's
4 cognitive abilities seemed to be adequate, she was oriented to
5 person, place and time, and her attention, memory and
6 concentration seemed to be fair. (AR 561-562).

7 The record, as correctly assessed by the ALJ, does not
8 demonstrate that Plaintiff's level of functioning was consistent
9 with mental retardation. The ALJ properly found, consistent with
10 all medical professionals of record, that Plaintiff had a severe
11 medically determinable impairment of borderline intellectual
12 functioning (AR 29) and determined that this impairment did not
13 meet or equal a Listings impairment. Based on the foregoing,
14 Plaintiff failed to establish that she met or equaled the listing
15 requirements of 12.05C, and the ALJ did not err at step three of
16 the sequential evaluation process in this regard.

17 **2. Listing 12.04 - Affective Disorders**

18 Listing 12.04 deals with affective disorders characterized as
19 a disturbance of mood, accompanied by a full or partial manic or
20 depressive syndrome. 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.04.
21 To meet listing 12.04, Plaintiff must demonstrate persistent
22 medical findings of an affective disorder coupled with two of the
23 following: marked restrictions in activities of daily living,
24 marked difficulties in maintaining social functioning, marked
25 difficulties in maintaining concentration, persistence or pace, or
26 repeated episodes of decompensation, each of extended duration.
27 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.04. To meet listing
28 12.04, Plaintiff could also document a medical history of a

1 chronic affective disorder of at least two years duration that has
2 caused more than a minimal limitation of ability to do basic work
3 activities. 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.04C. As
4 noted above, Plaintiff bears the burden of establishing that her
5 impairments satisfy the requirements of a Listings impairment.
6 *Tackett*, 180 F.3d at 1098-1099.

7 Plaintiff argues that the July 27, 2000 report of Dr. Bailey
8 supports her assertion of meeting Listing 12.04. (Ct. Rec. 13-2,
9 p. 10). This report was actually completed by Dr. Gross and
10 affirmed by Dr. Bailey. (AR 564-566). Although the form does
11 note several moderate limitations with Plaintiff's functioning, it
12 was not found that Plaintiff suffered any marked restrictions.
13 (AR 564-566). In fact, as noted above, the doctors indicated that
14 Plaintiff's level of understanding and memory was compatible with
15 remembering short and simple instructions, concentration and
16 attention should be adequate for simple repetitive tasks for a
17 full workday and full workweek, social interaction capacity should
18 be adequate for dealing with peers and supervisors, and adaptation
19 capacity should be intact for usual work setting. (AR 566). Dr.
20 Gross also filled out a psychiatric review technique form on July
21 27, 2000, indicating that Plaintiff was only slightly limited in
22 activities of daily living, moderately limited in social
23 functioning, seldom had deficiencies in concentration,
24 persistence, or pace and had only one or two instances of
25 decompensation in the workplace. (AR 575). Dr. Bailey made
26 essentially identical findings on a psychiatric review technique
27 form on December 12, 2000. (AR 625). Furthermore, state agency
28 reviewing physician, John McRae, Ph.D., completed a psychiatric

1 review technique form on August 20, 2003, indicating that
2 Plaintiff was only mildly restricted in activities of daily
3 living, moderately limited in maintaining social functioning, had
4 moderate difficulties in maintaining concentration, persistence,
5 or pace and had no repeated episodes of decompensation. (AR 791).

6 Plaintiff also directs the Court's attention to the
7 psychological evaluation completed by Dr. Valdez in July of 2003.
8 (Ct. Rec. 13-2, p. 11; AR 696-701). Consistent with the above
9 medical professionals, Dr. Valdez noted several moderate
10 limitations, but no marked or severe limitations. (AR 696-701).
11 Dr. Valdez also specifically found that Plaintiff's concentration
12 and attention were not grossly impaired and her memory was good
13 and noted that she was punctual for her appointment and was able
14 to stay on task during the interview and testing. (AR 701).

15 Plaintiff also points to the forms completed by Mr. DeLeon.
16 (Ct. Rec. 13-2, p. 11, Ct. Rec. 24, p. 4). As noted above, Mr.
17 DeLeon's opinions are not persuasive. *See supra*.

18 Finally, Plaintiff indicates that the check-box form
19 completed by Muhammed Kahn, M.D., supported a finding that
20 Plaintiff met or equaled Listing 12.04. (Ct. Rec. 13-2, p. 10, AR
21 582-585). On August 31, 2000, Dr. Kahn filled out a form checking
22 several boxes indicating that Plaintiff had marked functional
23 limitations due to her moderate depression.² (AR 584-585). A
24 check-box form is entitled to little weight. *Crane v. Shalala*, 76
25 F.3d 251, 253 (9th Cir. 1996) (stating that the ALJ's rejection of
26

27 ²It is significant to note, however, the Dr. Khan indicated that mental
28 health intervention (antidepressant adjustment and therapy) was likely to
restore or substantially improve Plaintiff's ability to work in a regular and
predictable manner. (AR 585).

1 a check-off report that did not contain an explanation of the
2 bases for the conclusions made was permissible). The ALJ
3 appropriately rejected Dr. Khan's opinions because they were given
4 for use in determining Plaintiff's eligibility for public
5 assistance, the opinions were not supported by reference to
6 standardized testing, there was no treatment relationship between
7 Dr. Khan and Plaintiff, and he did not have a detailed,
8 longitudinal picture of Plaintiff's impairments. (AR 33). The
9 undersigned notes that Dr. Khan's check-box findings are also
10 inconsistent with the weight of the record evidence. Accordingly,
11 the undersigned agrees with the ALJ that Dr. Khan's report is not
12 persuasive.

13 Dr. Saroian evaluated Plaintiff on June 28, 2000, and
14 determined that Plaintiff did not display psychomotor retardation
15 or agitation. (AR 561). Although Dr. Saroian diagnosed Plaintiff
16 with major depression, recurrent, moderate, she noted that
17 Plaintiff's cognitive abilities seemed to be adequate, her
18 attention, memory and concentration seemed to be fair, she seemed
19 to have insight into her illness and to display good judgment, and
20 she did all of her own household chores, took the bus to
21 appointments, watches television and does needlework. (AR 561-
22 562).

23 Clinical psychologist, Lynn M. Orr, Ph.D., evaluated
24 Plaintiff on November 23, 2004. (AR 1023-1032). Dr. Orr
25 questioned Plaintiff's effort and the validity of several of
26 Plaintiff's responses on exam. (AR 1023-1028). Dr. Orr found no
27 indication of psychomotor agitation or retardation, and noted that
28 Plaintiff appeared only mildly depressed while on antidepressants.

1 (AR 1026). While Dr. Orr indicated that the record reflected a
2 borderline range of intelligence, she indicated that Plaintiff's
3 behavior during the exam was more that of a person in the average
4 or low-average range. (AR 1027). Dr. Orr diagnosed a Dysthymic
5 Disorder, with early onset, mild while on medication and possible
6 underlying learning disabilities. (AR 1027).

7 Based on the foregoing, it is apparent that Plaintiff has
8 failed to establish that she meets or equals Listing 12.04 for
9 affective disorders, and, accordingly, the ALJ did not err at step
10 three of the sequential evaluation process in this regard.

11 The undersigned additionally finds that the ALJ's mental RFC
12 finding as a whole is properly supported. The record does not
13 reflect more restrictive findings than Plaintiff having difficulty
14 working without supervision and in adapting to changes in the
15 workplace or in procedures, and that she would be unable to
16 perform work that would not accommodate her occasional
17 concentration deficits, irritability and flat affect. (AR 32).
18 This mental RFC finding by the ALJ is in accord with the weight of
19 the record evidence. Accordingly, the ALJ appropriately did not
20 find Plaintiff more limited from a psychological standpoint.

21 **B. Physical Limitations**

22 Plaintiff also contends that the ALJ erred by finding that
23 she is capable of light work since the majority of the medical
24 information of record supports a finding that she is limited to
25 sedentary exertion level work due to her severe degenerative
26 arthritis in her low back. (AR 13-2, p. 13). The Commissioner
27 responds that the ALJ's physical RFC finding is supported by
28 substantial evidence. (Ct. Rec. 22, pp. 20-27).

1 Having considered Plaintiff's medical records and testimony,
2 the ALJ found that Plaintiff has the physical RFC to perform light
3 exertion level work with specified postural and nonexertional
4 limitations. (AR 32). In making this determination, the ALJ
5 considered the relevant evidence of record and rejected certain
6 physician opinions he found contrary to the weight of the record
7 evidence. (AR 29-34).

8 In a disability proceeding, the courts distinguish among the
9 opinions of three types of physicians: treating physicians,
10 physicians who examine but do not treat the claimant (examining
11 physicians) and those who neither examine nor treat the claimant
12 (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 839
13 (9th Cir. 1996). A treating physician's opinion is given special
14 weight because of his familiarity with the claimant and his
15 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.
16 1989). Thus, more weight is given to a treating physician than an
17 examining physician. *Lester*, 81 F.3d at 830. However, the
18 treating physician's opinion is not "necessarily conclusive as to
19 either a physical condition or the ultimate issue of disability."
20 *Magallanes v. Bowen*, 881 F.2d 7474, 751 (9th Cir. 1989) (citations
21 omitted).

22 The Ninth Circuit has held that "[t]he opinion of a
23 nonexamining physician cannot by itself constitute substantial
24 evidence that justifies the rejection of the opinion of either an
25 examining physician or a treating physician." *Lester*, 81 F.3d at
26 830. Rather, an ALJ's decision to reject the opinion of a
27 treating or examining physician, may be *based in part* on the
28 testimony of a nonexamining medical advisor. *Magallanes*, 881 F.2d

1 at 751-55; *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).
2 The ALJ must also have other evidence to support the decision such
3 as laboratory test results, contrary reports from examining
4 physicians, and testimony from the claimant that was inconsistent
5 with the physician's opinion. *Magallanes*, 881 F.2d at 751-52;
6 *Andrews*, 53 F.3d 1042-43. Moreover, an ALJ may reject the
7 testimony of an examining, but nontreating physician, in favor of
8 a nonexamining, nontreating physician only when he gives specific,
9 legitimate reasons for doing so, and those reasons are supported
10 by substantial record evidence. *Roberts v. Shalala*, 66 F.3d 179,
11 184 (9th Cir. 1995).

12 Thomas Dorsey, M.D., an orthopedic specialist, examined
13 Plaintiff of June 1, 2000. (AR 545-550). Dr. Dorsey noted that
14 x-rays of the lumbar spine revealed that there was some
15 hypertrophic osteophyte formation about the facet joint at L5-S1.
16 (AR 548). Based on his examination and a review of the x-rays,
17 Dr. Dorsey diagnosed radiographic changes, lumbar spine,
18 consistent with Plaintiff's age and multiple somatic complaints
19 without evidence of significant orthopaedic pathology. (AR 548).
20 He opined that Plaintiff could lift or carry 50 pounds
21 occasionally and 25 pounds frequently (medium exertion work), push
22 and pull without restriction, may occasionally engage in stooping
23 and crouching activities, and should be able to stand, walk, and
24 sit for six hours out of an eight-hour day with standard breaks.
25 (AR 549).

26 Contrary to Plaintiff's argument (Ct. Rec. 13-2, p. 12), the
27 x-ray reports support Dr. Dorsey's conclusions. August 31, 2000,
28 x-rays showed that the vertebral body was normal and in alignment,

1 the disc spaces were preserved, and there were degenerative
2 changes within the posterior facet joints with narrowing of the
3 joint spaces and sclerosis of ventricular margins. (AR 591).
4 Degenerative change posterior facet joints, lower lumbosacral
5 spine was diagnosed. (AR 591). March 13, 2001 x-rays revealed an
6 overall stable exam compared to the August 31, 2000 x-rays. (AR
7 773). Although it was noted that oblique film showed severe
8 degenerative facet change versus residual bone grafting at the L5
9 level, it was noted that it appeared to be grossly stable. (AR
10 773). The September 1996 lumbar spine CT scan referenced by
11 Plaintiff (Ct. Rec. 13-2, p. 12), revealed hypertrophic
12 degenerative changes at the facets of L4-5 and L5-S1 levels,
13 showing slight interval worsening since prior study (AR 290). No
14 definite evidence of significant bulge or herniation was found at
15 the levels studied. (AR 290).

16 These studies, and Dr. Dorsey's examination, support the
17 ALJ's finding of a severe impairment due to degenerative changes
18 of the spine (AR 29) and a finding that Plaintiff was limited to
19 light exertion work (AR 32). The ALJ also considered the opinion
20 of medical expert Almquist, who thoroughly reviewed the record.
21 (AR 960-983). Dr. Almquist indicated that Plaintiff suffered from
22 obesity and mild to moderate degenerative arthritis of the
23 lumbosacral spine at L4-5 and L5-S1 without radiculopathy. (AR
24 963). Dr. Almquist explained how the CT scans and x-rays of
25 record confirmed his opinion that Plaintiff had moderate
26 degenerative arthritis changes and would be limited to light
27 exertion level work. (AR 967-983). Dr. Almquist testified that

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1 Plaintiff's condition, arthritis of the facets, is very common for
2 middle aged people. (AR 982). He stated that she is a typical
3 light work patient with obesity. (AR 983). The undersigned
4 agrees with Dr. Almquist's assessment as well as the ALJ's
5 findings regarding Plaintiff's physical RFC.

6 Alex Najera, M.D., Plaintiff's treating physician in 2002 and
7 2003, opined on check-box forms on August 1, 2002, and July 1,
8 2003, that Plaintiff was limited to sedentary exertion level work.
9 (AR 728, 761). As discussed above, a check-box form, without an
10 explanation of the bases for the conclusions, is entitled to
11 little weight. *Crane*, 76 F.3d at 253. These forms contain no
12 details or other rationale for the conclusions noted. The check-
13 box reports of Dr. Najera also conclude that the limitations he
14 assessed were expected to last a maximum of 10 months. (AR 728,
15 761). Therefore, Dr. Najera found that Plaintiff's limitations
16 would not meet the duration requirements of the Act (one year),
17 instead finding that they were only expected to last a maximum of
18 30 weeks. 42 U.S.C. § 1382c(a)(3)(A).

19 Although the ALJ erred by noting that Dr. Najera's opinions
20 were entitled to less weight because they were given by a
21 physician who did not have a treatment relationship with
22 Plaintiff, the ALJ correctly noted that the opinions were given
23 for use in evaluating Plaintiff's public assistance eligibility
24 and were not supported by reference to standardized medical
25 testing. (AR 33). Moreover, as noted by the Commissioner (Ct.
26 Rec. 22, p. 23), Dr. Najera completed two additional physical
27 evaluation forms in 2004, one limiting her to sedentary work (AR
28 ///

1 1035) and another limiting her to light work (AR 1039). Dr.
2 Najera's opinions were appropriately rejected by the ALJ. (AR
3 33).

4 A check-box form filled out by Richard P. Bunch, M.D., on
5 January 28, 1997, noted that Plaintiff would be restricted to
6 sedentary work. (AR 340). However, as noted by the Commissioner
7 (Ct. Rec. 22, p. 24), reviewing state agency physicians found on
8 June 29, 2000, and December 8, 2000, that Plaintiff was limited to
9 light exertion work, with some postural limitations (AR 552-553;
10 608-609).

11 It is the responsibility of the ALJ to determine credibility,
12 resolve conflicts in medical testimony and resolve ambiguities.
13 *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996). The Court
14 thus has a limited role in determining whether the ALJ's decision
15 is supported by substantial evidence and may not substitute its
16 own judgment for that of the ALJ even if it might justifiably have
17 reached a different result upon de novo review. 42 U.S.C. §
18 405(g). The undersigned finds that the ALJ thoroughly analyzed
19 the evidence of record and provided specific and legitimate
20 reasons for rejecting opinions that Plaintiff was limited to
21 sedentary exertion work. Accordingly, the ALJ's physical RFC
22 determination, that Plaintiff is limited to light exertion work,
23 is appropriate in this case.

24 **C. Plaintiff's Credibility**

25 Plaintiff argues that the ALJ's opinion that Plaintiff is not
26 fully credible is not properly supported. (Ct. Rec. 13-2, pp. 13-
27 17). The Commissioner responds that the ALJ's credibility finding
28 is supported by substantial evidence. (Ct. Rec. 22, pp. 18-20).

1 It is the province of the ALJ to make credibility
2 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
3 1995). However, the ALJ's findings must be supported by specific
4 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
5 1990). Once the claimant produces medical evidence of an
6 underlying impairment, the ALJ may not discredit her testimony as
7 to the severity of an impairment because it is unsupported by
8 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
9 1998) (citation omitted). Absent affirmative evidence of
10 malingering, the ALJ's reasons for rejecting the claimant's
11 testimony must be "clear and convincing." *Lester v. Chater*, 81
12 F.3d 821, 834 (9th Cir. 1995). "General findings are
13 insufficient: rather the ALJ must identify what testimony is not
14 credible and what evidence undermines the claimant's complaints."
15 *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th
16 Cir. 1993).

17 Since there is evidence of malingering in this case, it was
18 not necessary for the ALJ to provide clear and convincing
19 rationale to reject Plaintiff's subjective complaints. As noted
20 above, Dr. Orr evaluated Plaintiff on November 23, 2004, and
21 questioned Plaintiff's effort and the validity of several of
22 Plaintiff's responses on exam. (AR 34, 1023-1028). As noted by
23 the ALJ, Dr. Orr determined that Plaintiff's description regarding
24 delusional thinking and visual and auditory hallucinations were
25 atypical and had not appeared in any previous history, the
26 validity of her responses on memory testing was questioned, and
27 the results of the Trial 1 and Trial 2 tests indicated a very high
28 likelihood that Plaintiff was not putting forth her best effort.

1 (AR 34, 1024-1027). Dr. Orr administered a test of memory
2 malingering and found that the score raised "significant questions
3 regarding her being completely forthcoming in reporting her
4 functional level and abilities accurately." (AR 34, 1026).

5 The ALJ determined that Plaintiff's alleged subjective
6 symptoms and functional limitations are not credible to the extent
7 that they would have precluded her from performing a limited range
8 of light work. (AR 33-34). In support of this finding, the ALJ
9 indicated as follows: (1) the record fails to establish that
10 Plaintiff has sought or required significant forms of treatment
11 such as periods of hospital confinement, emergency room care or
12 significant office care other than for routine maintenance;
13 (2) although she has alleged disabling musculoskeletal complaints,
14 she has not been prescribed long-term medications such as anti-
15 inflammatories, narcotics, steroids or muscle relaxants for her
16 alleged pain; (3) Plaintiff's treatment efforts and requirements
17 are inconsistent with her alleged constant pain and disability;
18 and (4) Plaintiff's treatment history with regard to her
19 depression is inconsistent with disabling symptoms and functional
20 limitations (treatment notes reflect that her depression has
21 improved with medication and therapy). (AR 33-34).

22 As noted above, the ALJ is responsible for reviewing the
23 evidence and resolving conflicts or ambiguities in testimony.
24 *Magallanes*, 881 F.2d at 751. If evidence supports more than one
25 rational interpretation, the court must uphold the decision of the
26 ALJ. *Allen*, 749 F.2d at 579. It is the role of the trier of
27 fact, not this Court, to resolve conflicts in evidence.
28 *Richardson*, 402 U.S. at 400.

1 After reviewing the record, the undersigned judicial officer
2 finds that the ALJ's rationale for discounting Plaintiff's
3 subjective complaints, and, in particular, the medical report of
4 Dr. Orr, provide sufficient support for the ALJ's conclusion that
5 Plaintiff was not entirely credible. Accordingly, the undersigned
6 finds that the ALJ did not err by concluding that Plaintiff's
7 subjective complaints regarding the extent of her functional
8 limitations were not fully credible in this case. (AR 33-34).

9 **D. Application of the Grids**

10 Plaintiff contends that the ALJ erred by failing to apply the
11 grids in this case. (Ct. Rec. 13-2, pp. 5-6). The Commissioner
12 responds that application of the grids was not necessary since the
13 ALJ found, at step four of the sequential evaluation process, that
14 Plaintiff could perform her past relevant work as an agricultural
15 sorter. (Ct. Rec. 22, pp. 27-28).

16 Social Security Ruling ("SSR") 82-61 provides that, pursuant
17 to 20 C.F.R. § 404.1520(e) and § 416.920(e), a claimant will be
18 found not disabled when it is determined that she retains the RFC
19 to perform either the actual functional demands and job duties of
20 a particular past relevant job, or the functional demands and job
21 duties of the occupation as generally required by employers
22 throughout the national economy. SSR 82-61.

23 "If a claimant shows that he or she cannot return to his or
24 her previous job, the burden of proof shifts to the Secretary to
25 show that the claimant can do other kinds of work." *Embrey v.*
26 *Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Therefore, the burden
27 shifts to the ALJ to identify specific jobs existing in
28 substantial numbers in the national economy that Plaintiff can

1 perform despite her identified limitations only after Plaintiff
2 has established a prima facie case of disability by demonstrating
3 she cannot return to her former employment. *Hoffman v. Heckler*,
4 785 F.2d 1423, 1425 (9th Cir. 1986). The ALJ can satisfy this
5 burden by either (1) applying the grids³ or (2) taking the
6 testimony of a vocational expert. *Burkhart v. Bowen*, 856 F.2d
7 1335, 1340 (9th Cir. 1988).

8 As determined above, the weight of the record evidence in
9 this case supports the ALJ's RFC finding that Plaintiff is capable
10 of performing light exertion work with specified postural and
11 nonexertional limitations. *See supra*.

12 Vocational expert Bill Weiss testified at the administrative
13 hearing held on November 18, 2004. (AR 984-1016). Mr. Weiss
14 indicated that Plaintiff's past work as a field worker II, was a
15 heavy-duty, unskilled job. (AR 986, 989). However, after the ALJ
16 and Plaintiff's counsel examined Plaintiff regarding her
17 vocational history (AR 991-1006), Mr. Weiss also concluded that
18 Plaintiff performed past relevant work as an agricultural sorter
19 with trimming, a position considered light-duty and unskilled (AR
20 1006-1007).

21 At step four of the sequential evaluation process, the ALJ
22 found that, based on Plaintiff's RFC and the vocational expert's
23 testimony, Plaintiff was capable of performing her past relevant
24 work as an agricultural sorter, a light exertion, unskilled
25 position. (AR 34). The ALJ thus determined, at step four of the
26

27 ³The grids are an administrative tool the Commissioner may rely on when
28 considering claimants with substantially uniform levels of impairment.
Burkhart, 856 F.2d at 1340 (*citing Derosiers v. Secretary of Health and Human
Serv.*, 846 F.2d 573, 578 (9th Cir. 1988)).

1 sequential evaluation process, that Plaintiff was not disabled
2 within the meaning of the Social Security Act. (AR 35-36).
3 Accordingly, there was no need for the ALJ to continue to step
4 five of the sequential evaluation process which would require a
5 determination to be made regarding whether Plaintiff, despite her
6 limitations, is capable of performing other work existing in
7 sufficient numbers in the national economy. Application of the
8 grids was not required in this case.

9 **CONCLUSION**

10 Having reviewed the record and the ALJ's conclusions, this
11 Court finds that the ALJ's decision that Plaintiff is able to
12 perform light exertion work, including her past relevant work as
13 an agricultural sorter, is supported by substantial evidence and
14 free of legal error. Plaintiff is thus not disabled within the
15 meaning of the Social Security Act. Accordingly,

16 **IT IS ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec.**
18 **13**) is **DENIED**.

19 2. Defendant's Motion for Summary Judgment (**Ct. Rec.**
20 **21**) is **GRANTED**.

21 3. The District Court Executive is directed to enter
22 judgment in favor of Defendant, file this Order, provide a copy to
23 counsel for Plaintiff and Defendant, and **CLOSE** this file.

24 **DATED** this 4th day of May, 2006.

25
26 s/Michael W. Leavitt
MICHAEL W. LEAVITT
27 UNITED STATES MAGISTRATE JUDGE
28